

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of  
ROSS MCCLINTOCK, ET AL., for Review  
of Order No. 81-92 of the California  
Regional Water Quality Control Board,  
Colorado River Basin Region. Our  
File No. A-305.

Order No. WQ 82-9

BY THE BOARD:

On November 18, 1981, the California Water Quality Control Board, Colorado River Basin Region (Regional Board) adopted revised waste discharge requirements (requirements) in Order No. 81-92 for the Coachella Valley Water District; La Quinta Hotel Sewage Disposal Facilities (discharger). The requirements regulate the discharge of wastewater from the La Quinta Hotel complex, which currently includes 165 hotel units, 100 condominiums, a laundry room, a restaurant and a clubhouse. The requirements permit the discharge of 150,000 gallons per day (gpd) of domestic sewage.

On December 16, 1981, the State Water Resources Control Board (State Board) received a petition from Ross McClintock, Robert Reynolds, James West, Robert James and Mr. and Mrs. Gus Funtas (petitioners) seeking review of the Order. <sup>1</sup>/ The petitioners own land near the disposal facility.

1. The petitioners requested a stay of the effect of the order, but did not allege facts or produce proof as required by Title 23 Admin. Code, Section 2053. The petitioners subsequently agreed to withdraw their request for a stay.



## I. BACKGROUND

The La Quinta Hotel has been in existence for several decades. Before 1978, wastewater was collected and discharged to a septic tank. In 1978, a new septic tank/seepage pit system was constructed. Waste discharge requirements were adopted in Order No. 78-68, regulating the discharge of 34,500 gpd by Landmark Land Co., the owner of the hotel.

On September 24, 1980, the Regional Board adopted new waste discharge requirements in Order No. 80-69. The requirements reflected a new discharger, the Coachella Valley Water District (CVWD). The requirements also increased the allowable wastewater to 73,700 gpd to accommodate flows from the hotel and a proposed condominium and golf course complex. An emergency addendum was added to Order No. 80-69 on September 23, 1981, which permitted the discharge of 50,000 gpd of septic tank effluent for spray or flood irrigation of an alfalfa field.<sup>2/</sup> The addendum was required because the existing disposal facility was failing due to overloading.

On November 18, 1981, the Regional Board adopted new waste discharge requirements in Order No. 81-92. Those requirements cover the same sources as Order No. 80-69, but increase the authorized discharge from 73,700 to 150,000 gpd.<sup>3/</sup> The new requirements provide that the wastewater would flow through a pump station

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2. The total flow limit remained at 73,700 gpd.
  3. In a letter to the State Board, CVWD explained that the increased proposed flow reflects planned construction of new units at the La Quinta complex.

into the existing septic tank/seepage pit system. Flows in excess of what the seepage pits can handle would be pumped to the alfalfa field for ultimate disposal. The requirements also specify that an aerated sewage lagoon/settling basin system will be constructed if necessary to comply with the requirements. In fact, CVWD has completed construction of an aerated lagoon. Thus, at present, the District has the capability of disposing of the sewage generated by the La Quinta complex in two ways. One, it can use the septic tank/seepage pits with any excess going to the aeration lagoon/settling basin system and then to the alfalfa fields. Or it can bypass the septic tank/seepage pits and pump the sewage directly to the aerated lagoon. Both of these disposal methods are permissible under Order No. 81-92, unless it is determined that the septic tanks should be bypassed in order to meet requirements. At present the District is using both the septic tanks and the aerated lagoon/settling basin system. The requirements also state that the continued discharge under these requirements is temporary, pending construction of an areawide treatment plant by CVWD. Order No. 81-92 is the basis for the petition considered herein.

## II. CONTENTIONS AND FINDINGS

The petitioners contend that in adopting the waste discharge requirements, the Regional Board failed to comply with Water Code Section 13263 and with the provisions of the California Environmental Quality Act (CEQA), Public Resources Code Sections 21000 et seq. Water Code Section 13263 provides, in relevant part:

"The requirements shall implement relevant water quality control plans...and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste

discharges, the need to prevent nuisance, and the provisions of Section 13241." 4/

The petitioners specifically allege that the Regional Board violated the provisions of Section 13263 regarding prevention of nuisance, consideration of beneficial uses and water quality objectives, and implementation of the relevant water quality control plan. The petitioners also allege that the Regional Board did not comply with the provisions of CEQA regarding evaluation of negative declarations.

1. Contention: The Regional Board failed to comply with the requirement of Water Code Section 13263 that waste discharge requirements shall take into consideration the need to prevent nuisance.

A. The requirements do not adequately prohibit odors.

Finding: The petitioners allege that the Regional Board did not comply with the provision of Section 13263 regarding nuisance because there is not adequate protection against odors. The petitioners argued in their petition that noxious odors have occurred and that the order should contain the following requirements to remedy the problem: require aeration prior to disposal by irrigation; contain an odor control plan; require that the wastewater used for irrigation contain a dissolved oxygen concentration no less than 2 mg/l; prohibit odors outside the boundaries of the septic tank and disposal areas; require a report on construction of aeration facilities; and prohibit ponding of sewage outside of the disposal area.

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4. Section 13241 sets forth standards for the establishment by Regional Boards of water quality objectives in water quality control plans.

Water Code Section 13263 provides that waste discharge requirements shall "take into consideration...the need to prevent nuisance." "Nuisance" is defined in the Water Code to include:

"Anything which is...indecent or offensive to the senses... so as to interfere with the comfortable enjoyment of life or property, and [which] affects at the same time an entire community or neighborhood, or any considerable number of persons." (Water Code Section 13050(m).)

The requirement of Section 13263, that requirements must take into consideration the prevention of nuisance, is addressed by Order No. 81-92's prohibition against creation of nuisance. (Discharge Specification A.1.) Odors are clearly included within this prohibition. In addition, the following specific provisions of the requirements will prevent odors.

The petitioners recommend that the requirements mandate aeration prior to irrigation, and that reclaimed water used for irrigation not exceed a dissolved oxygen concentration of 2 mg/l. The requirements specify that in the event an aeration lagoon is constructed, a minimum dissolved oxygen concentration of 2 mg/l must be attained. (Discharge Specification A.11.) The Regional Board has reported that the lagoon has already been constructed. The requirement that reclaimed water contain a dissolved oxygen concentration of no less than 2 mg/l is therefore already applicable, and the request for a provision requiring aeration has been met. A report on construction of aeration facilities is now unnecessary.

Petitioners' remaining contentions regarding odor control -- requirement of an odor control plan and prohibition against ponding of sewage outside the disposal area -- are adequately addressed by the requirements. Order No. 81-92 prohibits both the creation of nuisance and the surface flow of sewage away from the disposal area.

We note that the petitioners have expressed their satisfaction that the provisions included in this order will "[provide] neighboring properties with protection from noxious odors."<sup>5/</sup> We conclude that the requirements as interpreted herein contain adequate provisions regarding odor control.

B. The requirements do not prohibit the discharge of toxic wastes.

Finding: The petitioners apparently claim that the discharge of toxic materials could create a nuisance, but they admit that it is unlikely that any toxic discharge will occur.

The discharge of any waste, except pursuant to requirements, is illegal. (Water Code Section 13264.) The requirements prohibit the discharge of any wastewater other than domestic sewage and swimming pool wastewater. (Discharge Specification A.2.) It is therefore not necessary for the Regional Board specifically to prohibit the discharge of every conceivable substance. If toxics were to be discharged, CVWD would be required to file a new report of waste discharge. (Water Code Section 13260.)

We therefore conclude that the requirements need not specify a prohibition against the discharge of toxic materials.

2. Contention: The Regional Board failed to comply with the requirements of Water Code Section 13263 that waste discharge requirements shall take into consideration beneficial uses to be protected and water quality objectives reasonably required for that purpose.

A. Because the requirements do not completely control the discharge of nitrates to the groundwater, through reclamation, the Regional Board did not adequately consider the water quality objectives "reasonably required" to protect beneficial uses.

5. Letter from Lois E. Jeffrey, attorney for petitioners, to Craig M. Wilson, dated July 30, 1982.

Finding: In a previous order, Order No. WQ 81-15, we addressed a similar contention. In that order, we stated that the water quality objectives for nitrates contained in the Basin Plan for the West Colorado River Basin are not meant to be absolute limitations in requirements, but that there is a nitrate loading problem in the basin. The Basin Plan also provides that septic tanks are a source of nitrogen contribution which should be controlled where feasible. In conclusion, we stated that a comprehensive study of the problem of nitrate loading in the Upper Coachella Valley groundwater basin is required and that expansion of facilities which produce nitrates should not be allowed unless the study shows that the discharge will not affect the quality of groundwater in the area.

The La Quinta area should be included in the Regional Board's nitrate study. The holding of Order No. WQ 81-15 regarding "no expansion" applies only to facilities which produce nitrates. The requirements as construed herein, however, do require reclamation. To the extent that the La Quinta facilities are operated so that the sewage is ultimately applied to the alfalfa field, the uptake of nitrogen by the alfalfa will significantly reduce the amount of nitrogen potentially available for percolation into the usable groundwater.<sup>6/</sup> However, to the extent that a portion of the sewage percolates through the seepage pits and never reaches the alfalfa field, the potential for nitrate buildup remains. We find that the

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6. The nitrogen contained in the wastewater could result in application of amounts varying from 100 to 700 pounds per acre each year depending on the total volume and nitrogen concentrations of the discharge. Research conducted at the University of California, Riverside, indicates that alfalfa will effectively utilize 500 pounds of applied nitrogen per acre per year. It is unlikely the discharge will ever reach the maximum weight of 700 pounds, since that estimate is based on the assumption of all facilities in use at maximum levels.

District must operate its system so as to send its entire discharge to the aeration lagoon/settling basin system and thereafter to the alfalfa field to the maximum extent possible. This finding is based on the following factors:

1. Order No. 81-92 requires the construction of the aerated lagoon/settling basin system if needed to meet waste discharge requirements.

2. The District has in fact constructed the aerated lagoon/settling basin system and has the ability to pump the entire flow directly to this system.

3. Bypassing the seepage pits will implement the Basin Plan's provisions regarding control of nitrates as well as the principles we established in our Order No. WQ 81-15 regarding no expansion of facilities which produce nitrates.

This requirement that the seepage pits be bypassed coupled with our direction that the La Quinta area be included in the nitrate study, addresses petitioner's contention that Order No. 81-92 is inadequate to protect against nitrate buildup.

In a final issue involving nitrates, we note that our Order No. WQ 81-15 required that the discharger conduct groundwater monitoring. The petitioners herein have requested that the requirements be amended to require monitoring. Since we are asking the Regional Board to include the La Quinta area within the scope of its comprehensive nitrate study of the Upper Coachella Valley groundwater basin, groundwater monitoring in the area should be conducted. Rather than amending the requirements, however, the Regional Board should use the authority contained in Water Code Section 13267 to determine the extent of monitoring required in this area.

B. The Regional Board did not consider the water quality objectives for total dissolved salts (TDS).

Finding: The petitioners argue that the hotel or laundry "may" use an on-site regenerated water softener which would increase salts in the discharge, and that the requirements should therefore include restrictions on TDS. The discharger answers that the facilities do not include an on-site regenerated water softener. Therefore, there should be no significant increase in TDS caused by the discharge and the contention is without merit. If, at some time in the future, the discharger wishes to use such a water softener, it would have to seek an amendment to the requirements.<sup>7/</sup>

3. Contention: The Regional Board failed to comply with the requirements of Water Code Section 13263 that waste discharge requirements shall implement relevant water quality control plans.

Finding: In this portion of their petition, petitioners argue that the requirements should include a termination date. The requirements already provide that the permit is temporary, but do not include a termination date. Because we have determined that it is unlikely the discharge will result in contributing to the nitrate-loading problem in the basin, we find that a specific termination date is unnecessary. We note, however, that Order No. 81-92 requires the discharger to submit, by December 1982, a progress report on its efforts to construct the areawide sewage treatment plant. If this report fails to indicate satisfactory progress, the Regional Board should consider appropriate measures such as a time schedule.

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7. Provision B.1 of the Regional Board order requires the discharger to report in writing prior to making any modifications in this facility which would result in a material change in the quality of the wastewater.

4. Contention: The Regional Board did not comply with the provisions of CEQA in reviewing the negative declaration for the project.

Finding: The petitioner apparently argues that the Regional Board was required to consider environmental effects other than those on water quality in reviewing a negative declaration submitted by CVWD. Title 14, California Administrative Code, Section 15085.5 provides, however:

"In deciding whether to...approve a project, a Responsible Agency has responsibility for mitigating or avoiding only the environmental effects of those activities which are within the scope of its statutory activities." 8/

The Regional Board, acting as a Responsible Agency in this matter, was limited in its authority to consider matters other than those relating to water quality. 9/

We find, given the evidence presented to us, that the Regional Board complied with the requirements of CEQA.

### III. CONCLUSIONS

1. The provision of Order No. 81-92 requiring that the aeration lagoon/settling basin/alfalfa field irrigation system be used if needed to meet the waste discharge requirements and the provisions regarding irrigation should be invoked.

2. The La Quinta area should be included in the comprehensive nitrate study being conducted by the Regional Board.

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8. This section was added pursuant to adoption of AB 884 in 1977. (Stats. 1977, Chapter 1200.) Petitioners cite 57 Atty.Gen.Ops. 19 (1974) in support of their argument. That opinion, however, pre-dates AB 884 and Section 15085.5.

9. We do note that in adopting waste discharge requirements, regional boards can consider non-water-resource related factors if necessary to implement basin plans. Regional boards may also inquire into areas of broader environmental concern for the purpose of expressing conclusions to other agencies. In this case, there is no evidence that the Regional Board's environmental review was not complete.

3. In all other respects, the waste discharge requirements were properly adopted.

IV. ORDER

IT IS ORDERED THAT, for the reasons discussed above:

1. Order No. 81-92 is appropriate and proper provided that the provision requiring utilization of the aerated lagoon/settling basin/alfalfa field irrigation system is invoked.

2. The La Quinta area should be included in the comprehensive nitrate study of the Upper Coachella Valley groundwater basin.

Dated: August 19, 1982

ABSENT

Carla M. Bard, Chairwoman

/s/ L. L. Mitchell

L. L. Mitchell, Vice Chairman

/s/ Jill D. Golis

Jill D. Golis, Member

/s/ F. K. Aljibury

F. K. Aljibury, Member